

§ 93.305

§ 93.305 Qualification as affordable housing; modest housing requirements for homeownership; resale or recapture requirements.

(a) Housing that is for acquisition by a family pursuant to § 93.304 must be modest housing.

(1) The housing must be modest housing as follows: The housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area for newly constructed or standard housing. The grantee must use the HTF affordable homeownership limits provided by HUD for newly constructed housing and for existing housing. HUD will provide limits for affordable newly constructed housing based on 95 percent of the median purchase price for the area using Federal Housing Administration (FHA) single family mortgage program data for newly constructed housing, with a minimum limit based on 95 percent of the U.S. median purchase price for new construction for nonmetropolitan areas. HUD will provide limits for affordable existing housing based on 95 percent of the median purchase price for the area using FHA single family mortgage program data for existing housing data and other appropriate data that are available nation-wide for sales of existing housing, with a minimum limit based on 95 percent of the state-wide nonmetropolitan area median purchase price using these data. For States with no non-metropolitan areas, the minimum purchase price is defined as the lesser of the State non-metro or the United States non-metro median.

(2) In lieu of the limits provided by HUD, the grantee may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows: The grantee must set forth the price for different types of single family housing for the jurisdiction. The grantee may determine separate limits for existing housing and newly constructed housing. For housing located outside of metropolitan areas, a grantee may aggregate sales data from more than one county, if the counties are contiguous and similarly situated. The following information must be included in the annual action plan of the consolidated

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plan submitted to HUD for review and updated in each action plan:

(i) The 95 percent of median area purchase price must be established in accordance with a market analysis that ensured that a sufficient number of recent housing sales are included in the survey.

(ii) Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a 2-month reporting period; for less than 250 sales per month, at least a 3-month reporting period. The data must be listed in ascending order of sales price.

(iii) The address of the listed properties must include the location within the grantee. Lot, square, and subdivision data may be substituted for the street address.

(iv) The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire area.

(v) To determine the median, take the middle sale on the list if an odd number of sales, and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by 0.95 to determine 95 percent of the median area purchase price.

(b) *Resale or recapture requirements.* The grantee must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. The HTF-assisted housing must meet the affordability requirements for not less than 30 years if resale restrictions are used. If recapture restrictions are used, the affordability periods are based on the amount of HTF funds per unit as follows:

Homeownership assistance HTF amount per-unit	Minimum period of affordability in years
Under \$30,000	10
\$30,000–\$50,000	20
Over \$50,000	30

(1) *Resale.* Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing

is made available for subsequent purchase only to a buyer whose family qualifies as a very low-income family and will use the property as the family's principal residence. The resale requirement must also ensure that the price at resale provides the original HTF-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of income-eligible homebuyers. The grantee must specifically define "fair return on investment" and "affordability to a reasonable range of very low-income homebuyers," and specifically address how it will make the housing affordable to an income eligible homebuyer in the event that the resale price necessary to provide fair return is not affordable to the subsequent buyer. Deed restrictions, covenants running with the land, or other mechanisms approved by HUD must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure, or assignment of an FHA insured mortgage to HUD. The grantee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(2) *Recapture.* (i) Recapture provisions must ensure that the grantee recoups all or a portion of the HTF assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The grantee may structure its recapture provisions

based on its program design and market conditions. Recapture provisions may permit the subsequent homebuyer to assume the HTF assistance (subject to the HTF requirements for the remainder of the period of affordability) if the subsequent homebuyer is income-eligible, and no additional HTF assistance is provided.

(ii) The following options for recapture requirements are acceptable to HUD. The grantee may adopt, modify, or develop its own recapture requirements for HUD approval. In establishing its recapture requirements, the grantee is subject to the limitation that, when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HTF funds) and any closing costs.

(A) *Recapture entire amount.* The grantee may recapture the entire amount of the HTF assistance from the homeowner.

(B) *Reduction during affordability period.* The grantee may reduce the HTF assistance amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.

(C) *Shared net proceeds.* If the net proceeds are not sufficient to recapture the full HTF assistance (or a reduced amount as provided for in this section) plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the grantee may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HTF funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\frac{\text{HTF investment}}{\text{HTF investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{HTF amount to be recaptured}$$

$$\frac{\text{homebuyer investment}}{\text{HTF investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

(D) *Owner investment returned first.* The grantee may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HTF assistance.

(E) *Amount subject to recapture.* The HTF assistance that is subject to recapture is based on the amount of HTF assistance that enabled the homebuyer to buy the dwelling unit. This includes any HTF assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (*i.e.*, the development subsidy). The recaptured funds must be used to carry out HTF-eligible activities in accordance with the requirements of this part. If the HTF assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.

Subpart H—Other Federal Requirements

§ 93.350 Other federal requirements and nondiscrimination; affirmative marketing.

(a) *General.* The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HTF program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.

(b) *Affirmative marketing.* (1) Each grantee must adopt and follow affirmative marketing procedures and requirements for rental projects containing five or more HTF-assisted housing units and for homeownership assistance programs. Affirmative marketing steps consist of actions to provide in-

formation and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If a grantee's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with § 93.303(d)(3), the grantee must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy (*e.g.*, the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices the grantee and owner must adhere to in order to carry out the grantee's affirmative marketing procedures and requirements (*e.g.*, use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by the grantee and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the rental housing or homeownership assistance program without special outreach (*e.g.*, through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the grantee and owners to affirmatively market rental